

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MOUNTAIN UTILITIES, INC.	)	
	)	
COMPLAINANT	)	
	)	
vs.	)	CASE NO. 91-316
	)	
EQUITABLE GAS COMPANY	)	
	)	
DEFENDANT	)	

O R D E R

Mountain Utilities, Inc. ("Mountain") has brought a complaint against Equitable Gas Company ("Equitable") alleging that Equitable has violated Mountain's Certificate of Public Convenience and Necessity. For reasons stated herein, the Commission finds that the complaint fails to state a prima facie case and, on its own motion, dismisses the complaint.

Mountain is a local distribution company which provides natural gas service to portions of Johnson County, Kentucky. On January 19, 1959, the Commission granted a Certificate of Public Convenience and Necessity to Mountain's predecessor, Shale Oil Company, to construct a gas distribution system in the northwest section of Johnson County, Kentucky.<sup>1</sup> These facilities were subsequently constructed.

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<sup>1</sup> Case No. 3556, Application of Shale Gas Company, Incorporated, for a Certificate of Convenience and Necessity, Order dated January 19, 1959.

In later years the Commission granted Mountain a certificate to reconstruct and renovate this distribution system.<sup>2</sup>

Equitable provides natural gas service to residential and small commercial customers in Kentucky who are in proximity to the gathering lines and well connecting lines of Kentucky West Virginia Gas Company ("Kentucky West"). It is an affiliate of Kentucky West, an interstate pipeline company, from whom it receives its entire natural gas supply.

In 1991 two Mountain customers, William Burchett and Langley Brown, applied to Equitable for natural gas service. Equitable accepted their applications and began serving them in August 1991. Mountain protested Equitable's action and subsequently filed its complaint with the Commission.

In its complaint, Mountain alleges that its Certificate of Public Convenience and Necessity entitles it exclusively to serve Burchett and Brown and all persons who are located in the area where its facilities are located. It contends that Commission Regulation 807 KAR 5:001, Section 9(3), restricts another utility's right to provide service to that area. It alleges that Equitable, by providing service to Burchett and Brown, has infringed upon its Certificate of Public Convenience and Necessity and violated

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<sup>2</sup> Case No. 7858, Application of Mountain Utilities, Inc. for Authority to Apply for Loan Funds From Any State or Government Agency and Issuance of a Certificate of Convenience and Necessity to Construct and Restore its Lines and Facilities with such Funds and to Borrow from Said Agencies, Order dated October 20, 1980.

Commission Regulation 807 KAR 5:001, Section 9. Mountain requests that Equitable be ordered to cease serving all persons within Mountain's service area.

Mountain misunderstands the purpose and effect of a Certificate of Public Convenience and Necessity. A certificate is required before the construction of any utility facilities which are not ordinary extensions of existing systems in the usual course of business. It is intended to prevent the wasteful duplication of utility facilities. It does not establish an exclusive service territory for the applicant utility. The certificates granted to Mountain and its predecessor, in fact, make no mention of an exclusive service territory but merely authorize the construction of a gas distribution system. This Commission is not authorized to establish exclusive service territories for natural gas utilities. See Kentucky Utilities Co. v. Pub. Serv. Comm'n, Ky., 390 S.W.2d 168, 175 (1965) (stating that existing utilities do not "have any right to be free of competition").<sup>3</sup>

Having reviewed Mountain's complaint, as amended, and being otherwise sufficiently advised, the Commission finds that:

1. Mountain's complaint fails to state a prima facie case.
2. The relief requested in Mountain's complaint, i.e., a declaration that its Certificate of Public Convenience and Necessity

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<sup>3</sup> Subsequent to the Kentucky Utilities decision, KRS 278.016-018 was enacted. This statute authorizes the Commission to establish exclusive service areas for retail electric suppliers. The General Assembly has not authorized the Commission to establish such service areas for other types of utilities.

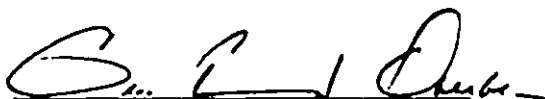
establishes an exclusive service territory, is beyond the Commission's authority to grant.

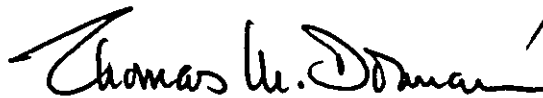
3. A hearing in this matter is not necessary in the public interest or for the protection of substantial rights.

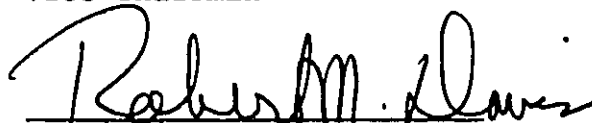
IT IS THEREFORE ORDERED that Mountain's complaint is dismissed without prejudice.

Done at Frankfort, Kentucky, this 6th day of April, 1992.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director